IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4464 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BAI DAHI WIDOW OF PARSOTTAM KANJI & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR AJ PATEL for Petitioner(s) : 1 - 5.
MS PB SHETH AGP for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA

Date : 21/01/2006

ORAL JUDGMENT

The petitioners have challenged in this petition the impugned order dated 23.2.1996 passed by the Gujarat Revenue Tribunal (for short “the Tribunal”) in Revision

Application No.10.B.A.154/95 dismissing the revision application on the technical ground of delay and laches.

It is true that there was delay of about 19 months in approaching the Tribunal against the impugned order, but the same was sufficiently explained. It seems that the learned Tribunal, without considering the affidavit filed by the petitioners for condoning delay, rejected the revision application on the hyper technical ground of delay and laches. However, Ms.Sheth, learned AGP tried to support the order of Tribunal by submitting that once the Tribunal has exercised its discretion against the petitioners by not condoning the delay, then this court should not interfere in its supervisory writ jurisdiction. It is true that the Tribunal had jurisdiction, but in my considered opinion, the learned Tribunal materially erred in not exercising its jurisdiction in favour of the petitioners, when the delay was sufficiently explained. In case of ***Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others reported in AIR 1987 SC 1353***, the Hon'ble Supreme Court held that “refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can

happen is that a cause would be decided on merits after hearing the parties.”

In the instant case, the respondent No.2-Collector fixed premium of Rs.9,52,806.30 for the land in question for lifting restriction. The said amount was paid under protest and then the said impugned order dated 28.3.1993 passed by the Collector, Vadodara was sought to be challenged by the petitioner before the Tribunal. However, as stated earlier, purely on technical ground of delay, without assigning any cogent reason, the learned Tribunal dismissed the revision application without going into the merits of the case.

Under the circumstances, in my considered opinion, the learned Tribunal committed an error of jurisdiction, therefore, the impugned order dated 23.2.1996 (Annexure-D) is required to be quashed and set aside. Accordingly, it is quashed and set aside and the matter is remitted to the learned Tribunal to decide it on merits strictly in accordance with law, after condoning the delay in filing the revision application. Rule is made absolute with no order as to costs.

(B.J.SHETHNA, J.)

*pvv